

FILED  
COURT OF APPEALS  
DIVISION II

2022 FEB -2 PM 3:33

STATE OF WASHINGTON

BY 917  
DEPUTY

NO. 55431

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

KENNETH TAYLOR CURRY,  
APPELANT,

Clark County Superior Court  
Case No. 19 2 03380 06

**REPLY BRIEF OF PLAINTIFF**

V.

VANCOUVER HOUSING AUTHORITY  
et Al.,

RESPONDENTS.

In propria persona

Kenneth Taylor Curry  
1208 NE 143rd Avenue  
Apartment 3  
Vancouver, WA. 98684  
(360) 944 7056

PLAINTIFF'S OPENING BRIEF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

Table of Contents

page

|    |                                   |    |
|----|-----------------------------------|----|
|    | Table of Authorities              | ii |
| 1  | Introduction Reply I.             | 1  |
| 2  | Counter Statement of the Case II. | 2  |
| 3  | Counter Argument III.             | 2  |
| 4  | A. Defendants Waived Res judicata | 2  |
| 5  | B. The Statute of Limitations has |    |
| 6  | been waived                       | 7  |
| 7  | C. Defendants Are Not Entitled to |    |
| 8  | their Reasonable Attorney Fees    |    |
|    | or to Their Cost                  | 8  |
| 9  | Conclusion V.                     | 8  |
| 10 | Word Count Certification          | 10 |
| 11 |                                   |    |
| 12 |                                   |    |
| 13 |                                   |    |
| 14 |                                   |    |
| 15 |                                   |    |
| 16 |                                   |    |
| 17 |                                   |    |
| 18 |                                   |    |
| 19 |                                   |    |
| 20 |                                   |    |
| 21 |                                   |    |
| 22 |                                   |    |
| 23 |                                   |    |
| 24 |                                   |    |
| 25 | PLAINTIFF'S OPENING BRIEF         |    |

TABLE OF AUTHORITIES

|    |   |        |
|----|---|--------|
| 1  | Rainer National Bank v. Lewis,<br>30 Wn App 419, 422 (1981)                       | page 2 |
| 2  | Miles v. Housing Authority of<br>Cook County, 215 Ill App (1st) 1-14-             |        |
| 3  | 1292, HACC (Nov 11, 2019).  | page 6 |
| 4  | Hendrix v. Seattle Housing Authority,<br>2:07-cv-00657-TSZ                        | page 6 |
| 5  |   |        |
| 6  | Artis v. District of Columbia,<br>No. 16-460, 138 S. Ct. 594 (2018)               | page 6 |
| 7  | Todd v. DSN Dealer Serv. Network,<br>861 F. Supp. 1631 (D Kan 1994)               | page 6 |
| 8  |   |        |
| 9  | Burford et Al., v. Sun Oil Co. et Al.,<br>319 U.S. 31 <sup>5</sup> (May 24, 1943) | page 6 |
| 10 | Monroe v. Pape, 365 U.S. 167 (1967)   | page 7 |

Statutes

|    |                                   |        |
|----|-----------------------------------|--------|
| 12 | RCW § 4.16.040                    | page 1 |
| 13 | RCW § 4.16.170                    | page 1 |
| 14 | RCW § 4.16.185                    | page 1 |
| 15 | 28 U.S.C. § 1367(d)               | page 6 |
| 16 | 42 U.S.C. § 1983                  | page 7 |
| 17 | 42 U.S.C. §1437f(o)(1)(D), (2)(3) | page 8 |

Rules of Civil Procedure

|    |             |        |
|----|-------------|--------|
| 19 | CR 4 (2)    | page 3 |
| 20 | CR 8(C)     | page 2 |
| 21 | CR 11       | page 1 |
| 22 | CR 12(a)(1) | page 3 |

Rules of Appellate Procedure

|    |          |        |
|----|----------|--------|
| 24 | RAP 18.1 | page 1 |
|----|----------|--------|

25 PLAINTIFF'S OPENING BRIEF REPLY TO RESPONSE OF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

page iii

Code of Federal Regulations

1 24 CFR § 982.151 page 6

2 28 CFR § 36.302(a) page 8

3 Local State Agency Rule

4 Vancouver Housing Authority  
5 Administrative Plan page 1 - 9 page 6

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PLAINTIFF'S OPENING BRIEF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

**I. Introduction Reply**

Appellant does not seek a re-litigation of that which has already been litigated.

A. Does the doctrine of res judicata apply to issues reserved owing to abstention or override the doctrine of fairness? The District did not discuss any state laws question. And did not discuss the federal want of a pre-determination hearing question. Supplemental jurisdiction was denied.

B. Whether viewed as an apparent (3), three year statute of limitations or the actual (6), six year statute of limitations realized, there is no basis to dismiss Appellant's Complaint? At the State of Washington, Claims upon a written instrument have a six year statute of limitations. Plaintiff is the beneficiary of a contract between Defendant Vancouver Housing Authority and the United States Department of Housing and Urban Development. Wash. Rev. Code § 4.16.040. Moreover, judicial action interpose a toll. RCW § 4.16.170.

C. This Court should deny Respondents' reasonable attorney fees and costs incurred in the instant appeal? CR 11, Wash. Rev. Code § 4.84.185 or RAP 18.1 are not back door access to relief not otherwise available. The present appeal is not frivolous.

REPLY TO RESPONSE OF

PLAINTIFF'S OPENING BRIEF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

**II. Counter Statement of the Case**

Respondents' acts that are a foundation for  
1 the Appellant's claims, notwithstanding any occurrence  
2 prior to December 31, 2014, are a continuing stigma  
3 that inform Plaintiff's future with more than (3300)thirty  
4 three hundred public housing agencies across the  
5 United States of North America, (i.e., sister states,  
6 the District of Columbia, territories and insular  
7 areas.)

8 The District referenced a post termination offer  
9 of a hearing and did not discuss the claimed want  
10 of a pre-determination hearing. The Ninth Circuit  
11 and our National State Court refused to hear any  
12 question of Administrative Subject Matter Jurisdiction.  
13 Or any Washington State laws question.

14 **A. III. Counter Argument**

15 **Defendants Waived Res Judicata.** In pleading  
16 to a preceding pleading, a party shall set forth  
17 affirmatively . . . , **res judicata**, . . . and any  
18 other matter constituting an avoidance or affirmative  
19 defense. CR 8(C) Res judicata: Affirmative defense  
20 must be specifically plead. Rainer National Bank  
21 v. Lewis, 30 Wn App 419, 422 (1981) A Responsive  
22 Pleading was due (20) twenty days in the wake of  
23 the service of process, Complaint and Summons.

24 **REPLY TO RESPONSE OF**

25 **PLAINTIFF'S OPENING BRIEF**

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

page 3 CR 4 (2) and CR 12(a)(1). Defendants filed an Answer  
more than (9) nine months out of season and thereafter  
1 filed an Amended Answer. The Answer has not been  
2 served on Plaintiff. The Amended Answer has not  
3 been served on Plaintiff. The Summery Judgement  
4 Motion is not a responsive pleading. Complaint  
5 of 11-12-2019. Answer 8-28-2020. Motion Practice  
6 affirmative defense vehicle is 9-03-2020.

7 **Doctrine of Fairness require fair dealing.**

8 Defendants denied Plaintiff a disability assessment  
9 and denied thereby Plaintiff access to reasonable  
10 accommodations that provide equal access to even  
11 a post determination hearing. Exempli gratia: Real  
12 time closed captioning, note taker, neutral hearings  
13 facility local, verbatim record, et cetera.

14 The hearings officer relied on material ex parte  
15 communications and Defendants did not exercise due  
16 diligence or conform to their own agency records;  
17 to wit: Alleged no verification of disability.

18 Albeit Supplemental Security Income docu-  
19 ment and Medical Doctor approval are in  
20 Defendants' records 16 September 2014.

21  
22 Allegation that Misty Collard is not allowed  
23 to discontinue a 17 September 2014 meeting,  
24 albeit Collard's full report of the inter-

25 PLAINTIFF'S OPENING BRIEF REPLY TO RESPONSE OF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

action does not mention such an occurrence.

1 Allegation that Plaintiff never had an  
2 appointment with Collard albeit the record  
3 of Defendants' establish a 10 September  
4 2014 appointment and the 17 September 2014  
5 appointment. Severally with Collard.

6  
7 Allegation that Plaintiff never requested  
8 reasonable accommodations albeit that the  
9 16 September 2014 and the 24 September  
10 2014 requests are stamped received as  
11 dated.

12  
13 Allegation that Plaintiff threatened violence  
14 against Inessa A. Raybukin who reported  
15 to police that Plaintiff did not threaten  
16 violence against her person or the property  
17 of another.

18  
19 Allegation that Plaintiff refused to leave  
20 the building after closing albeit the actual  
21 Tracie Baldwin report recites that staff  
22 is outside with Plaintiff when Baldwin  
23 gave notice that (5) five o'clock has arrived.

24 REPLY TO RESPONSE OF

25 PLAINTIFF'S OPENING BRIEF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684



Defendants pretended that Plaintiff delayed  
Sasha Nicholson for 45, forty five minutes  
albeit she refused to perfect a receipt  
to Plaintiff as such time elapsed.

Defendants pretence that Plaintiff never  
requested a reasonable accommodation is  
belied by the Misty Collard report of 17  
September 2014 that recites Plaintiff had  
been denied reasonable accommodation relief  
prior to such day meeting. And that by  
parole Plaintiff then requested anew reasona-  
ble accommodations.

Defendants presented a David Overbay allega-  
tion that Plaintiff merely prepared a finan-  
cial request for reasonable accommodations  
albeit the Overbay message addressed the  
same as a reasonable accommodation request  
that require a medical nexus.

There are no shortage of reasonable minded persons  
who believe that denying a disabled person equal  
access to even a post determination hearing is less  
than fair whether a competent hearings officer.

REPLY TO RESPONSE OF

PLAINTIFF'S OPENING BRIEF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

ment operates under two basic programs, Housing  
1 Choice Vouchers is the largest. It utilizes an  
2 Annual Contributions Contract. 24 CFR § 982.151.  
3 Cf. V.H.A. Administrative Plan page 1 - 9 as revised  
4 on 23 January 2013. What does a Public Housing  
5 Agency do? Bottom Line: Comply with . . . , Annual  
6 Contributions Contract, . . . Hence! Defendants  
7 do acknowledge the contract.

8      The denial of a verbatim record prevents a mean-  
9 ingful review. Miles v. Housing Authority of Cook  
10 County, 215 Ill App (1st) 1-14-1292, HACC (Nov 11,  
11 2019). Cf. Hendrix v. Seattle Housing Authority,  
12 2:07-cv-00657-TSZ. A competent Hearings Officer  
13 is material to due process: allowing common law  
14 objections, oath or affirmation, cross-examination  
15 and proceeding intra vires.

16      Federal action toll Washington State Claims.  
17 28 U.S.C. § 1367(d): Artis v. District of Columbia,  
18 No. 16-460, 138 S. Ct. 594 (2018). Comity dictates  
19 that where timely and adequate state Court review  
20 is available, a federal Court sitting in equity  
21 must decline . . . of state Administrative Agencies.  
22 Todd v. DSN Dealer Serv. Network, 861 F. Supp. 1631  
23 (D Kan 1994) Burford et Al. v. Sun Oil Co. et Al.,  
24 319 U.S. 31<sup>5</sup> (May 24, 1943). Procedural Due Process

25      PLAINTIFF'S OPENING BRIEF      REPLY TO RESPONSE OF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

page 7 Claims do not extend to 42 U.S.C. § 1983, not re-  
garding res judicata. Section 1983 is supplemental  
1 to sister state remedies. Monroe v. Pape, 365 U.S.  
2 167 (1967). Equity, whether a Declaratory Judgement  
3 or an Injunction never involve the nucleus of a  
4 prior judgement. Basic fact or intermediate fact  
5 that are often shared, will be set aside with any  
6 alleged ultimate fact to determine whether the Local  
7 State Agency has the original subject matter juris-  
8 diction. Is there agency authority to enforce the  
9 order at issue and the praecipe enjoining order  
10 while commanding relief.

11 Disabled persons whether older americans do  
12 have the right to travel, even to places that are  
13 open to the general public. Privilege and Immunities  
14 Clause, United States Constitution.

15 **B. The Statute of Limitations has been Waived.**

16 Defendants failed to serve upon Plaintiff any  
17 responsive pleading. (Answer or Amended Answer)  
18 Accordingly the alleged defense is waived. Idem.  
19 In arguendum: Even if Defendants had not waived  
20 the Statute of Limitations, the same has been abandoned  
21 by a failure to publish the request in their proposed  
22 order. Absent the required notice, Defendants did  
23 amend the said proposed order at open Court and  
24 by their Counsel setting hi hand and applying an

25 PLAINTIFF'S OPENING BRIEF REPLY TO RESPONSE OF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

page 8 interlinear insertion. Plaintiff assigns the said practice as an irregularity.

1 **C. Defendants Are Not Entitled to their Reasonable**  
2 **Attorney Fees or to Their Cost.**

3 At the State of Washington adversaries are expected  
4 to bear their own fees or cost unless a law or a  
5 contract provide such. This is not a frivolous  
6 appeal. The intention of the cited authority is  
7 barren of an intent to chill speech or the development  
8 of jurisprudence. Moreover Congress has set a limit  
9 on Housing Cost. And the same will be elevated  
10 above that limit should program participants have  
11 to pay in search of an elusive Pre-determination  
12 due process hearing. Post determination hearings  
13 are beneath the dignity of due process.

14 Plaintiff's rent contribution is set at 30%  
15 of his adjustable income. Consult 42 U.S.C. § 1437f  
16 (o)(1)(D), (2)(3); 28 CFR 36.302(a). There is a  
17 ban on increasing rent for the disabled persons.

18 **IV. CONCLUSION**

19 The lower Court error by dismissing Plaintiff's  
20 case. Equity never conflicts with laws cases.  
21 Original Subject Matter Jurisdiction is properly  
22 raised. A Jury must stand between the government  
23 and the accused, having all the protection of law,  
24 before government may publish that the accused is  
25 a criminal threat.

PLAINTIFF'S OPENING BRIEF      REPLY TO RESPONSE OF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

page 9

Plaintiff ask that the decision of the trial  
Court be reversed; and that Respondents be denied  
their reasonable attorney fees and cost. Plus such  
other relief set forth in Plaintiff's Opening Brief  
be and the same granted to Plaintiff.

*Kenneth Taylor Curry*

Submitted this 31st day of January, 2022.

In propria persona

Kenneth Taylor Curry

1208 NE 143rd Avenue

Apartment 3

Vancouver, Washington 98684

360 944 7056

PLAINTIFF'S OPENING BRIEF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

WORD COUNT CERTIFICATION

Based upon the hand count body of this work

1 being (8) eight pages at (14) fourteen point type,  
2 Plaintiff believes that the same are well within  
3 the required limit.

4

5 Submitted on this 31st day of January, 2022 by:

6 *Kenneth Taylor Curry*

7 Kenneth Taylor Curry  
8 In propria persona  
9 1208 NE 143rd Avenue  
10 Apartment 3  
11 Vancouver, Washington 98684  
12 360 944 7056

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PLAINTIFF'S OPENING BRIEF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684

CERTIFICATE OF SERVICE

FILED  
COURT OF APPEALS  
DIVISION II

I certify that on the day of January 31, 2022  
2022 FEB -2 PM 3:32

I served the Reply Brief on:

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

Defendants Attorney of record

Charles A. Isely  
205 E 11th St., Suite 102  
Vancouver, WA. 98666  
360 993 1200

By Hand Delivery

*Kenneth Curry*  
Kenneth Taylor Curry  
1208 NE 143rd Avenue  
Apartment 3  
Vancouver, WA. 98684  
360 944 7056

PLAINTIFF'S OPENING BRIEF

L.C. No. 19-2-03380-06  
(360) 944-7056

Kenneth Taylor Curry  
1208 N.E. 143rd Ave #3  
Vancouver, WA. 98684